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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,240	06/04/2007	Mitsuma Matsuda	062933	1622
38834	7590	02/17/2010		EXAMINER
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP				WIESE, NOAH S
1250 CONNECTICUT AVENUE, NW				
SUITE 700			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20036			1793	
			NOTIFICATION DATE	DELIVERY MODE
			02/17/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentmail@whda.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/598,240	MATSUDA, MITSUMA	
	<b>Examiner</b>	<b>Art Unit</b>	
	NOAH S. WIESE	1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 January 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2,3,7-9 and 12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2 and 7-9 is/are rejected.  
 7) Claim(s) 3 and 12 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

***Status of Application***

1. Acknowledgment is made of the amendments filed 01/15/2010. Upon entering the amendments, the claims 1, 4-6, and 10-11 are cancelled and claims 2-3, 7, and 9 are amended. The claims 2-3, 7-9, and 12 are pending and presented for examination.

***Finality Withdrawn***

2. Upon reconsideration of the office action mailed 11/16/2009, the notification that claims 7-8 contain allowable subject matter and would be allowable if drafted as independent claims is withdrawn, and thus so too is the finality of the previous action. New grounds of rejection are issued for claims 2 and 7-9 and this office action is therefore non-final.

***Claim Objections***

3. Claim 9 is objected to because of the following informalities: the claim states that the coloration agent is mixed with at least one additional oxide selected from those of the claim. This implies that the coloration agent is a separate product and is mixed with an additional oxide. However, the instant specification indicates that the coloration agent comprises a metal powder and said agent can also comprise the additional oxides of claim. That is to say that the additional oxide(s) are included as **a part** of the coloration agent rather than a separate component from the agent. The claim should be written in such a way to reflect this. This could be done by writing the claim to state “...wherein the coloration agent further comprises at least one oxide selected from the group...”. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 2 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Berry (US 4273807).

Regarding **claim 7**, as discussed in the previous office actions, the claim is drawn to a coloration agent that is comprised of metal powder and a metal oxide powder contained in the metal powder. The limitation that states the coloration agent is for use in ceramic articles is an intended use for the claimed product, and thus does not hold patentable weight. The source for the metal powder is a product-by-process limitation because the mere statement that the powder is from a certain source does not impart structural or compositional limitations on the powder. From the instant specification, the claimed coloration agent is understood to comprise a metal powder, said metal powder comprising both metallic iron and iron oxide powder. The total iron in the metal powder is thus understood as the total amount of elemental iron in the powder, derived from both the metallic iron amount and the iron component of the iron oxide in said metal powder.

Berry teaches a particulate product containing at least 75 wt% total iron content and at least 25 wt% iron metal (see Abstract). Berry teaches an example wherein a particulate mixture of Fe<sub>2</sub>O<sub>3</sub> and metal iron is prepared, said mixture having a total iron content of 77.39 wt% (see column 8, lines 34-48). The mixture taught by Berry therefore

meets all of the limitations of the instant claim even though it is not taught explicitly as a coloration agent. Claim 7 is thus anticipated.

Regarding **claim 2**, as discussed above, the source for the metal powder is a product-by-process limitation because the mere statement that the powder is from a certain source does not impart structural or compositional limitations on the powder. Thus, the particulate mixture taught by Berry meets all of the limitations of the dependent claim 2.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry (US 4273807).

Regarding **claim 8**, the claim differs from Berry as discussed above because while Berry teaches that ferric oxide ( $Fe_2O_3$ ) is the main oxide component of the metal powder, it does not teach any specific example wherein the amount of  $Fe_2O_3$  falls within the range of 60-65 wt%. However, as discussed above, Berry teaches an example comprising 73.5 wt%  $Fe_2O_3$  and further teaches examples comprising 47.88 wt% and 28.61 wt%  $Fe_2O_3$  (see column 12, lines 51-67). While no specific range for  $Fe_2O_3$  content in the inventive particulate mixture is given, these examples suggest that the content can be varied within a range that encompasses that of instant claim 8. Thus, one of ordinary skill in the art would understand that particulates of the type taught by Berry could be prepared containing  $Fe_2O_3$  in an amount falling within the instantly

claimed range. Per MPEP 2144.05, in the case where the claimed ranges “overlap or lie inside ranges disclosed by the prior art” a prima facie case of obviousness exists. Therefore, claim 8 is obvious and not patentably distinct over the prior art of record.

Regarding **claim 9**, Berry teaches that the particulate mixture can comprise cobalt added as a compound in an amount of up to 10 wt% to improve magnetization properties (see column 6, lines 38-45). One of ordinary skill in the art would have understood that cobalt oxide would be an appropriate compound of cobalt for this use.

***Allowable Subject Matter***

8. Claims 3 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art, either alone or in combination, fails to teach or suggest a color developing clay comprising a clay raw material mixed with 1-5 wt% of a coloration agent meeting the limitations of instant claim 7 or 8.

***Conclusion***

9. Claims 2 and 7-9 are rejected. Claims 3 and 12 are objected to.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah S. Wiese whose telephone number is 571-270-3596. The examiner can normally be reached on Monday-Friday, 7:30am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Noah Wiese  
1 February 2010  
AU 1793

/Karl E Group/  
Primary Examiner, Art Unit 1793